

**ASSEMBLY, No. 1185**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Assemblyman ANDREW ZWICKER**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**Assemblywoman VALERIE VAINIERI HUTTLE**

**District 37 (Bergen)**

**Assemblyman CLINTON CALABRESE**

**District 36 (Bergen and Passaic)**

**Co-Sponsored by:**

**Assemblywoman Speight**

**SYNOPSIS**

Increases Spill Compensation and Control Act cap on recovery of damages from certain dischargers.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 1/3/2022)**

1 AN ACT raising limits on liability for damages for major facilities  
2 and vessels for hazardous substance discharges, and amending  
3 P.L.1976, c.141.  
4

5 BE IT ENACTED by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. Section 8 of P.L.1976, c.141 (C.58:10-23.11g) is amended to  
9 read as follows:

10 8. a. The fund shall be strictly liable, without regard to fault,  
11 for all cleanup and removal costs and for all direct and indirect  
12 damages no matter by whom sustained, including but not limited to:

13 (1) The cost of restoring, repairing, or replacing any real or  
14 personal property damaged or destroyed by a discharge, any income  
15 lost from the time such property is damaged to the time such  
16 property is restored, repaired or replaced, and any reduction in  
17 value of such property caused by such discharge by comparison  
18 with its value prior thereto;

19 (2) The cost of restoration and replacement, where possible, of  
20 any natural resource damaged or destroyed by a discharge;

21 (3) Loss of income or impairment of earning capacity due to  
22 damage to real or personal property, including natural resources  
23 destroyed or damaged by a discharge; provided that such loss or  
24 impairment exceeds 10% of the amount which claimant derives,  
25 based upon income or business records, exclusive of other sources  
26 of income, from activities related to the particular real or personal  
27 property or natural resources damaged or destroyed by such  
28 discharge during the week, month or year for which the claim is  
29 filed;

30 (4) Loss of tax revenue by the State or local governments for a  
31 period of one year due to damage to real or personal property  
32 proximately resulting from a discharge;

33 (5) Interest on loans obtained or other obligations incurred by a  
34 claimant for the purpose of ameliorating the adverse effects of a  
35 discharge pending the payment of a claim in full as provided by this  
36 act.

37 b. The damages which may be recovered by the fund, without  
38 regard to fault, subject to the defenses enumerated in subsection d.  
39 of this section against the owner or operator of a major facility or  
40 vessel, shall not exceed **[\$50,000,000.00]** \$350,000,000 for each  
41 major facility or **[\$1,200]** \$2,400 per gross ton for each vessel,  
42 except that such maximum limitation shall not apply and the owner  
43 or operator shall be liable, jointly and severally, for the full amount  
44 of such damages if it can be shown that such discharge was the  
45 result of (1) gross negligence or willful misconduct, within the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 knowledge and privity of the owner, operator or person in charge,  
2 or (2) a gross or willful violation of applicable safety, construction  
3 or operating standards or regulations. Damages which may be  
4 recovered from, or by, any other person shall be limited to those  
5 authorized by common or statutory law.

6 c. (1) Except as provided in section 2 of P.L.2005, c.43  
7 (C.58:10-23.11g12), any person who has discharged a hazardous  
8 substance, or is in any way responsible for any hazardous  
9 substance, shall be strictly liable, jointly and severally, without  
10 regard to fault, for all cleanup and removal costs no matter by  
11 whom incurred. Such person shall also be strictly liable, jointly and  
12 severally, without regard to fault, for all cleanup and removal costs  
13 incurred by the department or a local unit pursuant to subsection b.  
14 of section 7 of P.L.1976, c.141 (C.58:10-23.11f).

15 (2) In addition to the persons liable pursuant to this subsection,  
16 in the case of a discharge of a hazardous substance from a vessel  
17 into the waters of the State, the owner or operator of a refinery,  
18 storage, transfer, or pipeline facility to which the vessel was en  
19 route to deliver the hazardous substance who, by contract,  
20 agreement, or otherwise, was scheduled to assume ownership of the  
21 discharged hazardous substance, and any other person who was so  
22 scheduled to assume ownership of the discharged hazardous  
23 substance, shall be strictly liable, jointly and severally, without  
24 regard to fault, for all cleanup and removal costs if the owner or  
25 operator of the vessel did not have the evidence of financial  
26 responsibility required pursuant to section 2 of P.L.1991, c.58  
27 (C.58:10-23.11g2).

28 Where a person is liable for cleanup and removal costs as  
29 provided in this paragraph, any expenditures made by the  
30 administrator for that cleanup and removal shall constitute a debt of  
31 that person to the fund. The debt shall constitute a lien on all  
32 property owned by that person when a notice of lien identifying the  
33 nature of the discharge and the amount of the cleanup, removal and  
34 related costs expended from the fund is duly filed with the clerk of  
35 the Superior Court. The clerk shall promptly enter upon the civil  
36 judgment or order docket the name and address of the liable person  
37 and the amount of the lien as set forth in the notice of lien. Upon  
38 entry by the clerk, the lien, to the amount committed by the  
39 administrator for cleanup and removal, shall attach to the revenues  
40 and all real and personal property of the liable person, whether or  
41 not that person is insolvent.

42 For the purpose of determining priority of this lien over all other  
43 claims or liens which are or have been filed against the property of  
44 an owner or operator of a refinery, storage, transfer, or pipeline  
45 facility, the lien on the facility to which the discharged hazardous  
46 substance was en route shall have priority over all other claims or  
47 liens which are or have been filed against the property. The notice  
48 of lien filed pursuant to this paragraph which affects any property

1 of a person liable pursuant to this paragraph other than the property  
2 of an owner or operator of a refinery, storage, transfer, or pipeline  
3 facility to which the discharged hazardous substance was en route,  
4 shall have priority from the day of the filing of the notice of the lien  
5 over all claims and liens filed against the property, but shall not  
6 affect any valid lien, right, or interest in the property filed in  
7 accordance with established procedure prior to the filing of a notice  
8 of lien pursuant to this paragraph.

9 To the extent that a person liable pursuant to this paragraph is  
10 not otherwise liable pursuant to paragraph (1) of this subsection, or  
11 under any other provision of law or under common law, that person  
12 may bring an action for indemnification for costs paid pursuant to  
13 this paragraph against any other person who is strictly liable  
14 pursuant to paragraph (1) of this subsection.

15 Nothing in this paragraph shall be construed to extend or negate  
16 the right of any person to bring an action for contribution that may  
17 exist under P.L.1976, c.141, or any other act or under common law.

18 (3) In addition to the persons liable pursuant to this subsection,  
19 any person who owns real property acquired on or after September  
20 14, 1993 on which there has been a discharge prior to the person's  
21 acquisition of that property and who knew or should have known  
22 that a hazardous substance had been discharged at the real property,  
23 shall be strictly liable, jointly and severally, without regard to fault,  
24 for all cleanup and removal costs no matter by whom incurred.  
25 Such person shall also be strictly liable, jointly and severally,  
26 without regard to fault, for all cleanup and removal costs incurred  
27 by the department or a local unit pursuant to subsection b. of  
28 section 7 of P.L.1976, c.141 (C.58:10-23.11f). Nothing in this  
29 paragraph shall be construed to alter liability of any person who  
30 acquired real property prior to September 14, 1993.

31 d. (1) In addition to those defenses provided in this subsection,  
32 an act or omission caused solely by war, sabotage, or God, or a  
33 combination thereof, shall be the only defenses which may be raised  
34 by any owner or operator of a major facility or vessel responsible  
35 for a discharge in any action arising under the provisions of this act.

36 (2) A person, including an owner or operator of a major facility,  
37 who owns real property acquired on or after September 14, 1993 on  
38 which there has been a discharge, shall not be liable for cleanup and  
39 removal costs or for any other damages to the State or to any other  
40 person for the discharged hazardous substance pursuant to  
41 subsection c. of this section or pursuant to civil common law, if that  
42 person can establish by a preponderance of the evidence that  
43 subparagraphs (a) through (d) apply, or if applicable, subparagraphs  
44 (a) through (e) apply:

45 (a) the person acquired the real property after the discharge of  
46 that hazardous substance at the real property;

47 (b) (i) at the time the person acquired the real property, the  
48 person did not know and had no reason to know that any hazardous

1 substance had been discharged at the real property, or (ii) the person  
2 acquired the real property by devise or succession, except that any  
3 other funds or property received by that person from the deceased  
4 real property owner who discharged a hazardous substance or was  
5 in any way responsible for a hazardous substance, shall be made  
6 available to satisfy the requirements of P.L.1976, c.141, or (iii) the  
7 person complies with the provisions of subparagraph (e) of  
8 paragraph (2) of this subsection;

9 (c) the person did not discharge the hazardous substance, is not  
10 in any way responsible for the hazardous substance, and is not a  
11 corporate successor to the discharger or to any person in any way  
12 responsible for the hazardous substance or to anyone liable for  
13 cleanup and removal costs pursuant to this section;

14 (d) the person gave notice of the discharge to the department  
15 upon actual discovery of that discharge.

16 To establish that a person had no reason to know that any  
17 hazardous substance had been discharged for the purposes of this  
18 paragraph (2), the person must have undertaken, at the time of  
19 acquisition, all appropriate inquiry into the previous ownership and  
20 uses of the property. For the purposes of this paragraph (2), all  
21 appropriate inquiry shall mean the performance of a preliminary  
22 assessment, and site investigation, if the preliminary assessment  
23 indicates that a site investigation is necessary, as defined in section  
24 23 of P.L.1993, c.139 (C.58:10B-1), and performed in accordance  
25 with rules and regulations promulgated by the department defining  
26 these terms.

27 Nothing in this paragraph (2) shall be construed to alter liability  
28 of any person who acquired real property prior to September 14,  
29 1993; and

30 (e) For the purposes of this subparagraph the person must have  
31 (i) acquired the property subsequent to a hazardous substance being  
32 discharged on the site and which discharge was discovered at the  
33 time of acquisition as a result of the appropriate inquiry, as defined  
34 in this paragraph (2), (ii) performed, following the effective date of  
35 P.L.1997, c.278, a remediation of the site or discharge consistent  
36 with the provisions of section 35 of P.L.1993, c.139 (C.58:10B-12),  
37 or, relied upon a valid final remediation document for a remediation  
38 performed prior to acquisition, or obtained approval of a remedial  
39 action workplan by the department after the effective date of  
40 P.L.1997, c.278 and continued to comply with the conditions of that  
41 workplan, and (iii) established and maintained all engineering and  
42 institutional controls as may be required pursuant to sections 35 and  
43 36 of P.L.1993, c.139. A person who complies with the provisions  
44 of this subparagraph by actually performing a remediation of the  
45 site or discharge as set forth in (ii) above shall be issued, upon  
46 application, a no further action letter by the department or a  
47 response action outcome by a licensed site remediation  
48 professional, as applicable. A person who complies with the

1 provisions of this subparagraph either by receipt of a final  
2 remediation document following the effective date of P.L.1997,  
3 c.278, or by relying on a previously issued final remediation  
4 document shall not be liable for any further remediation including  
5 any changes in a remediation standard or for the subsequent  
6 discovery of a hazardous substance, at the site, or emanating from  
7 the site, if the remediation was for the entire site, and the hazardous  
8 substance was discharged prior to the person acquiring the property.  
9 Notwithstanding any other provisions of this subparagraph, a person  
10 who complies with the provisions of this subparagraph only by  
11 virtue of the existence of a previously issued final remediation  
12 document shall receive no liability protections for any discharge  
13 which occurred during the time period between the issuance of the  
14 final remediation document and the property acquisition.  
15 Compliance with the provisions of this subparagraph (e) shall not  
16 relieve any person of any liability for a discharge that is off the site  
17 of the property covered by the final remediation document, for a  
18 discharge that occurs at that property after the person acquires the  
19 property, for any actions that person negligently takes that  
20 aggravates or contributes to a discharge of a hazardous substance,  
21 for failure to comply in the future with laws and regulations, or if  
22 that person fails to maintain the institutional or engineering controls  
23 on the property or to otherwise comply with the provisions of the  
24 final remediation document.

25 (3) Notwithstanding the provisions of paragraph (2) of this  
26 subsection to the contrary, if a person who owns real property  
27 obtains actual knowledge of a discharge of a hazardous substance at  
28 the real property during the period of that person's ownership and  
29 subsequently transfers ownership of the property to another person  
30 without disclosing that knowledge, the transferor shall be strictly  
31 liable for the cleanup and removal costs of the discharge and no  
32 defense under this subsection shall be available to that person.

33 (4) Any federal, State, or local governmental entity which  
34 acquires ownership of real property through bankruptcy, tax  
35 delinquency, abandonment, escheat, eminent domain, condemnation  
36 or any circumstance in which the governmental entity involuntarily  
37 acquires title by virtue of its function as sovereign, or where the  
38 governmental entity acquires the property by any means for the  
39 purpose of promoting the redevelopment of that property, shall not  
40 be liable, pursuant to subsection c. of this section or pursuant to  
41 common law, to the State or to any other person for any discharge  
42 which occurred or began prior to that ownership. This paragraph  
43 shall not provide any liability protection to any federal, State or  
44 local governmental entity which has caused or contributed to the  
45 discharge of a hazardous substance. This paragraph shall not  
46 provide any liability protection to any federal, State, or local  
47 government entity that acquires ownership of real property by  
48 condemnation or eminent domain where the real property is being

1 remediated in a timely manner at the time of the condemnation or  
2 eminent domain action.

3 (5) A person, including an owner or operator of a major facility,  
4 who owns real property acquired prior to September 14, 1993 on  
5 which there has been a discharge, shall not be liable for cleanup and  
6 removal costs or for any other damages to the State or to any other  
7 person for the discharged hazardous substance pursuant to  
8 subsection c. of this section or pursuant to civil common law, if that  
9 person can establish by a preponderance of the evidence that  
10 subparagraphs (a) through (d) apply:

11 (a) the person acquired the real property after the discharge of  
12 that hazardous substance at the real property;

13 (b) (i) at the time the person acquired the real property, the  
14 person did not know and had no reason to know that any hazardous  
15 substance had been discharged at the real property, or (ii) the person  
16 acquired the real property by devise or succession, except that any  
17 other funds or property received by that person from the deceased  
18 real property owner who discharged a hazardous substance or was  
19 in any way responsible for a hazardous substance, shall be made  
20 available to satisfy the requirements of P.L.1976, c.141;

21 (c) the person did not discharge the hazardous substance, is not  
22 in any way responsible for the hazardous substance, and is not a  
23 corporate successor to the discharger or to any person in any way  
24 responsible for the hazardous substance or to anyone liable for  
25 cleanup and removal costs pursuant to this section;

26 (d) the person gave notice of the discharge to the department  
27 upon actual discovery of that discharge.

28 To establish that a person had no reason to know that any  
29 hazardous substance had been discharged for the purposes of this  
30 paragraph (5), the person must have undertaken, at the time of  
31 acquisition, all appropriate inquiry on the previous ownership and  
32 uses of the property based upon generally accepted good and  
33 customary standards.

34 Nothing in this paragraph (5) shall be construed to alter liability  
35 of any person who acquired real property on or after September 14,  
36 1993.

37 e. Neither the fund nor the Sanitary Landfill Contingency Fund  
38 established pursuant to P.L.1981, c.306 (C.13:1E-100 et seq.) shall  
39 be liable for any damages incurred by any person who is relieved  
40 from liability pursuant to subsection d. or f. of this section for a  
41 remediation that involves the use of engineering controls but the  
42 fund and the Sanitary Landfill Contingency Fund shall be liable for  
43 any remediation that involves only the use of institutional controls  
44 if after a valid final remediation document has been issued the  
45 department orders additional remediation except that the fund and  
46 the Sanitary Landfill Contingency Fund shall not be liable for any  
47 additional remediation that is required to remove an institutional  
48 control.

1 f. Notwithstanding any other provision of this section, a  
2 person, who owns real property acquired on or after the effective  
3 date of P.L.1997, c.278 (C.58:10B-1.1 et al.), shall not be liable for  
4 any cleanup and removal costs or damages, under this section or  
5 pursuant to any other statutory or civil common law, to any person,  
6 other than the State and the federal government, harmed by any  
7 hazardous substance discharged on that property prior to  
8 acquisition, and any migration off that property related to that  
9 discharge, provided all the conditions of this subsection are met:

10 (1) the person acquired the real property after the discharge of  
11 that hazardous substance at the real property;

12 (2) the person did not discharge the hazardous substance, is not  
13 in any way responsible for the hazardous substance, and is not a  
14 corporate successor to the discharger or to any person in any way  
15 responsible for the hazardous substance or to anyone liable for a  
16 discharge pursuant to this section;

17 (3) the person gave notice of the discharge to the department  
18 upon actual discovery of that discharge;

19 (4) (a) within 30 days after acquisition of the property, the  
20 person commenced a remediation of the discharge, including any  
21 migration, pursuant to a department oversight document executed  
22 prior to acquisition, or (b) for property acquired after the date of  
23 enactment of P.L.2009, c.60 (C.58:10C-1 et al.), the person  
24 provides written notice of the acquisition to the department prior to  
25 or on the date of acquisition and the person remediates the property  
26 pursuant to the provisions of section 30 of P.L.2009, c.60  
27 (C.58:10B-1.3), and (c) the department is satisfied that remediation  
28 was completed in a timely and appropriate fashion; and

29 (5) Within ten days after acquisition of the property, or within  
30 30 days after the expiration of the period or periods allowed for the  
31 right of redemption pursuant to tax foreclosure law, the person  
32 agrees in writing to provide access to the State for remediation and  
33 related activities, as determined by the State.

34 The provisions of this subsection shall not relieve any person of  
35 any liability:

36 (1) for a discharge that occurs at that property after the person  
37 acquired the property;

38 (2) for any actions that person negligently takes that aggravates  
39 or contributes to the harm inflicted upon any person;

40 (3) if that person fails to maintain the institutional or  
41 engineering controls on the property or to otherwise comply with  
42 the provisions of a final remediation document or a remedial action  
43 workplan and a person is harmed thereby;

44 (4) for any liability to clean up and remove, pursuant to the  
45 department's regulations and directions, any hazardous substances  
46 that may have been discharged on the property or that may have  
47 migrated therefrom; and



1 (5) for that person's failure to comply in the future with laws  
2 and regulations.

3 g. Nothing in the amendatory provisions to this section adopted  
4 pursuant to P.L.1997, c.278 shall be construed to remove any  
5 defense to liability that a person may have had pursuant to  
6 subsection e. of this section that existed prior to the effective date  
7 of P.L.1997, c.278.

8 h. Nothing in this section shall limit the requirements of any  
9 person to comply with P.L.1983, c.330 (C.13:1K-6 et al.).  
10 (cf: P.L.2009, c.60, s.38)

11

12 2. This act shall take effect on the 180th day following the date  
13 of enactment.

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#### STATEMENT

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18 This bill would increase the cap on damages for certain  
19 discharges that may be recovered by the New Jersey Spill  
20 Compensation Fund pursuant to the "Spill Compensation and  
21 Control Act" from the owner or operator of a major facility, from  
22 \$50 million to \$350 million. It would also increase the cap on  
23 damages for certain discharges that may be recovered by the New  
24 Jersey Spill Compensation Fund pursuant to the "Spill  
25 Compensation and Control Act" from "vessels" from \$1,200 per  
26 gross ton to \$2,400 per gross ton.